THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 25134 of 2006

O r d e r:

Assailing the show cause notice of removal from service, dated 02.11.2006, issued by the Depot Manager, Piler Depot, the petitioner filed the present writ petition, as being illegal and arbitrary.

On the charge that the petitioner was found sleeping after consuming alcohol while on duty, a charge sheet was issued. The petitioner submitted his explanation. Dis-satisfied with the explanation an enquiry was conducted. Based on the enquiry report, the respondent issued the impugned show cause notice of removal from service.

The learned counsel for the petitioner submitted that the petitioner did not drink. If the petitioner said to have been found drunk and sleeping in an intoxicated condition, the respondent ought to have sent him for medical test, but the respondent without sending the petitioner for medical test, and without there being any medical evidence to show that the petitioner was drunk and was sleeping in an intoxicated condition, the action of the respondent is issuing the impugned show cause notice of removal from service, based on the enquiry report, is illegal and arbitrary. In support of his contention that in the absence of any medical report indicating that the petitioner was found drunk and was sleeping in an intoxicated condition, holding the petitioner guilty of the said charge is illegal, and based on such finding, issuing show cause notice of removal from service is illegal and arbitrary, the learned counsel for the petitioner placed reliance on the judgment of this Court in **J. Durgappa v. Industrial Tribunal**[1].

On the other hand, the learned Standing Counsel for the respondent-APSRTC contended that the impugned show cause notice of removal from service was issued based on the enquiry report, and the impugned order, being merely a show cause notice and not a final order, the petitioner may as directed submit his reply thereto.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-APSRTC.

The impugned order is merely a notice calling upon the petitioner to show cause as to why order of removal from service should not be passed. Though the petitioner contends that he did not drink and was not under intoxication, the fact remains, the petitioner was said to have been tested positive when Breath Analyzer Test was conducted. Whatever be the findings of the enquiry, it is for the petitioner to submit his explanation to the show cause notice. If the petitioner feels that there is no evidence to hold him guilty, and that without medical evidence, he cannot be removed from service, he may explain the same to the respondent in his reply to the show cause notice, and if the reply to be submitted by the petitioner is convincing, certainly the respondents will take a different view, but certainly this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, does not interfere with a show cause notice.

There is no merit in the writ petition, and the same is accordingly dismissed. However, the petitioner may submit his reply to the show cause notice, within a period of one week from today. No costs.

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N.V. RAMANA, J.

Dated: 14th December, 2006.

KSR

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[1] 1996 (1) ALT 18